

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES of AMERICA,

Plaintiff,

v.

BERNERT BARGE LINES, INC., in
personam; Tugboat KATHRYN B,
Coast Guard No., CG137775, her
engines, apparel, electronics, tackle,
boats, appurtenances, etc., in rem;
BARGE B-16, her engines, apparel,
electronics, tackle, boats, appurtenances,
etc., in rem; and DOE BARGE (a barge
owned and operated by Bernert Barge
Lines), her engines, apparel, electronics,
tackle, boats, appurtenances, etc., in rem,

Defendants.

CASE NO: 2:23-CV-0189-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the Parties' Joint Motion for Stipulated Protective
Order. ECF No. 16. For good cause shown, the Court GRANTS the Parties'
Motion.

This case stems from an allision that occurred at Lower Granite Lock and

1 Dam, a facility operated by the United States Army Corps of Engineers, on July 5,
2 2021. Because of the involvement of the United States Army Corps of Engineers
3 and sensitive security information and materials pertaining to Lower Granite Lock
4 and Dam, and with the agreement of the parties, the Court has determined that
5 there is good cause for issuance of a Protective Order pursuant to Federal Rule of
6 Civil Procedure 26(c) to govern the disclosure, use, and handling by the parties and
7 their respective agents, successors, and personal representatives of certain
8 information and items produced and received in discovery in the above-captioned
9 action. Accordingly, it is hereby **ORDERED**:

10 1. In connection with discovery proceedings in this action, the United States
11 may designate any document, thing, material, testimony or other information
12 derived therefrom, as “Confidential” under the terms of this Stipulated Protective
13 Order (“Order”). Confidential information is information that the United States
14 Army Corps of Engineers has not made public and which the Army Corps of
15 Engineers has designated as concerning, or relating to, the security and operation
16 of the Lower Granite Dam and Navigational Lock. By designating a document,
17 thing, material, testimony or other information derived therefrom as “confidential,”
18 under the terms of this Order, the United States is certifying to the court that there
19 is a good faith basis both in law and in fact for the designation within the meaning
20 of Fed. R. Civ. P. 26(g).

1 2. Confidential documents shall be so designated by stamping copies of the
2 document produced to a party with the legend “CONFIDENTIAL.” Stamping
3 “CONFIDENTIAL” on the cover of any multiple page document shall designate
4 all pages of the document as confidential, unless otherwise indicated by the
5 producing party.

6 3. Testimony taken at a deposition, conference, hearing or trial may be
7 designated as confidential by making a statement to that effect on the record at the
8 deposition or other proceeding. Arrangements shall be made with the court reporter
9 taking and transcribing such proceeding to separately bind portions of the
10 transcript containing information designated as confidential, and to label such
11 portions appropriately.

12 4. Material designated as confidential under this Order, the information
13 contained therein, and any summaries, copies, abstracts, or other documents
14 derived in whole or in part from material designated as confidential (“Confidential
15 Material”) shall be used only for the purpose of the prosecution, defense, or
16 settlement of this action, and for no other purpose.

17 5. Confidential Material produced pursuant to this Order may be disclosed or
18 made available only to the Court, to counsel for a party (including the paralegal,
19 clerical, and secretarial staff employed by such counsel), and to the “qualified
20 persons” designated below:

1 (a) a party, or an officer, director, or employee of a party deemed necessary
2 by counsel to aid in the prosecution, defense, or settlement of this action;

3 (b) experts or consultants (together with their clerical staff) retained by such
4 counsel to assist in the prosecution, defense, or settlement of this action;

5 (c) court reporter(s) employed in this action;

6 (d) a witness at any deposition or other proceeding in this action; and

7 (e) any other person to whom the parties agree to. Such agreement shall be in
8 writing.

9 Prior to receiving any Confidential Material, each above defined “qualified
10 person” shall be provided with a copy of this Order and shall execute a
11 nondisclosure agreement in the form of the Attachment appearing at ECF No. 16-2.

12 6. The United States may further designate certain discovery material or
13 testimony of a highly confidential nature as “CONFIDENTIAL - ATTORNEY’S
14 EYES ONLY” (Attorney’s Eyes Only Material”), in the manner described in ¶¶ 2
15 and 3 above. Attorney’s Eyes Only Material, and the information contained
16 therein, shall be disclosed only to the Court, to counsel for the parties (including
17 the paralegal, clerical, and secretarial staff employed by such counsel), and to
18 “qualified persons” listed in subparagraphs 5(b) through (e) above, but shall not be
19 disclosed to a party, or to an officer, director or employee of a party, unless
20 otherwise agreed or ordered. If disclosure of Attorney’s Eyes Only Material is

1 made pursuant to this paragraph, all other provisions in this Order with respect to
2 confidentiality shall also apply.

3 7. If Confidential Material, including any portion of a deposition transcript
4 designated as Confidential or Attorney's Eyes Only, is included in any papers to be
5 filed in Court, such papers shall be labeled "Confidential - Subject to Court Order"
6 and filed under seal until further order of this Court.

7 8. In the event that any Confidential Material is used in any court proceeding
8 in this action, it shall not lose its confidential status through such use, and the party
9 using such shall take all reasonable steps to maintain its confidentiality during such
10 use.

11 9. This Order shall be without prejudice to the right of the parties (i) to bring
12 before the Court at any time the question of whether any particular document or
13 information is confidential or whether its use should be restricted or (ii) to present
14 a motion to the Court under Fed. R. Civ. P. 26(c) for a separate protective order as
15 to any particular document or information, including restrictions differing from
16 those as specified herein. This Order shall not be deemed to prejudice that parties
17 in any way in any future application for modification of this Order.

18 10. This Order is entered solely for the purpose of facilitating the exchange of
19 documents and information between the parties to this action without involving the
20 Court unnecessarily in the process. Nothing in this Order nor the production of any

1 information or document under the terms of this Order nor any proceedings
2 pursuant to this Order shall be deemed to have the effect of an admission or waiver
3 by either party or of altering the confidentiality or non-confidentiality of any such
4 document or information or altering any existing obligation of any party or the
5 absence thereof.


6 11. This Order shall survive the final termination of this action, to the extent
7 that the information contained in Confidential Material is not or does not become
8 known to the public, and the Court shall retain jurisdiction to resolve any dispute
9 concerning the use of information disclosed hereunder. Upon termination of this
10 case, counsel for defendants shall assemble and return to the United States all
11 documents, material and deposition transcripts designated as confidential and all
12 copies of same.

13 IT IS SO ORDERED.

14 The District Court Clerk is directed to enter this Order and provide copies to
15 counsel.

16 DATED July 30, 2024.




THOMAS O. RICE
United States District Judge